

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES HALL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1328-JJF
)	
DAVID HOLMAN, Deputy Warden)	
LAWRENCE MEGUIGAN, and)	
CLYDE SAGERS)	
)	
Defendants.)	

DEFENDANTS' MOTION TO STAY DISCOVERY

COME NOW Defendants David Holman, Lawrence McGuigan, and Clyde Sagers and hereby move to stay all discovery until the Court has ruled upon Defendants' motion to dismiss. In support of their motion, the Defendants respectfully assert the following grounds:

- 1) James Hall, (hereinafter "Plaintiff"), is an inmate incarcerated with the State of Delaware Department of Correction (hereinafter "DOC") at the Delaware Correctional Center, located at Smyrna, Delaware.
- 2) On or about October 4, 2004, Plaintiff's complaint was filed with the Federal District Court for the District of Delaware against David Holman, Lawrence McGuigan, and Clyde Sagers (D.I. # 2). On or about February 4, 2005, Plaintiff filed an amended Complaint. (D.I. 4). On September 9, 2005, Plaintiff filed his second amended complaint. (D.I. 10). Defendant Lawrence McGuigan executed a waiver of service on October 13, 2005 Defendant David Holman executed a waiver of service on October 26, 2005, and Defendant Clyde Sagers executed a waiver of service on December 6, 2005. Defendants

are given until December 12, 2005 to answer Plaintiff's Complaint.

3) Although not reflected in the docket ¹, on October 31, 2005, Plaintiff sent copies of his Request for Admissions and Request for Production of Documents. (*See* copies of the Request for Admissions and Request for Production of Documents attached as Exhibit A). In response, counsel for the defendants wrote to Plaintiff stating the Defendants' position that they object to the commencement of discovery until after the Court rules on their Motion to Dismiss, which will be filed by December 12, 2005.

(D.I. 18). On November 14, 2005, Plaintiff responded by opposing Defendants' position and demanded that Defendants engage in discovery despite the fact that he was told that a potentially case-dispositive Rule 12 motion was pendency was to be filed in this case.

(D.I. 22). Plaintiff followed this objection with his Request for Interrogatories on November 16, 2005. (*See* Request for Interrogatories attached as Exhibit B).

4) Counsel for Defendants believes that Defendants' motion to dismiss is meritorious and case-dispositive. Until this Honorable Court rules on the motion, discovery will not help the parties determine or narrow the issues in a meaningful way. Due to the dispositive nature of the pending motions, conducting discovery at this point in the litigation will likely involve unnecessary expense and waste of time and resources.

5) The purpose of Rule 12 motion practice is to promote judicial economy by testing the legal sufficiency of a claim prior to a Defendant formally answering. Plaintiff unreasonably demands that Defendants engage in discovery before the Court has determined his claims have merit and before Defendants have even answered his complaint.

¹ The only indication that attempt was made to file the discovery requests with the Court is a deficiency notice sent to Plaintiff on October 31, 2005, returning all of his discovery documents.

For the above stated reasons, Defendants respectfully request that all discovery in this matter be stayed pending the Court's ruling on Defendants' motion to dismiss to be filed by December 12, 2005.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Lisa Barchi
Deputy Attorney General
Department of Justice
820 N. French Street, 6th floor
Wilmington, DE 19801
(302) 577-8400
lisa.barchi@state.de.us

Date: December 8, 2005

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CLYDE SAGERS)	
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16.5 CERTIFICATE OF COUNSEL

In compliance with Local Rule of Civil Procedure 16.5 counsel for the Defendants making the request for amendment of the Scheduling Order files this Certificate and states:

I certify that the Defendants have been provided a copy of their Motion to Stay Discovery and that service has been sent by regular mail.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Lisa Barchi

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7.1.1 CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies, pursuant to Local Rule 7.1.1, that:

1. The plaintiff is an inmate incarcerated in the Delaware Correctional system, at the Delaware Correctional Center, Smyrna, Delaware..
2. Since the plaintiff is not able to be reached by telephone, counsel for the State defendants has spent no time in attempting to reach an agreement on the subject of the motion for enlargement of time.
3. She assumes that the motion is opposed.

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Date: December 8, 2005

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on December 8, 2005, I electronically filed *Defendants'* *Motion to Stay Discovery* with the Clerk of the Court using CM/ECF which will send notification of such filing to the following: Lisa Barchi, Esquire. I hereby certify that on December 8, 2005, I have mailed by United States Postal Service, the document to the following non-registered participant:

James Hall
SBI # 167581
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Lisa Barchi
Deputy Attorney General
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